

Supplemental Extended Reporting Period Does Not Supplant Automatic Extended Reporting Period

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A federal district court in North Carolina court has held that a one-year supplemental extended reporting period purchased by an insured upon notice of non-renewal did not begin to run until after the expiration of the policy's automatic extended reporting period. *Anderson v. Cincinnati Ins. Co.* 2013 WL 445998 (W.D.N.C. Feb. 5, 2013).

The policy originally was issued to a bank for the policy period of November 3, 2007 to November 3, 2010. The policy afforded specified coverage for claims first made against the bank's directors and officers during that policy period or any extended reporting period included in or endorsed to the policy. The policy included, for no additional cost, a "basic" automatic 60-day extended reporting period that, by its terms "start [ed] immediately after the end of the 'policy period.'" The policy also allowed for the named insured, 60 days before the termination of the policy, to purchase at a cost equal to 200% of the expiring premium, a "supplemental" 12-month extended reporting period.

After receiving notice from the insurer of non-renewal on August 25, 2010, the bank purchased the supplemental extended reporting period, the terms of which were set forth in an endorsement to the policy. The endorsement identified the supplemental extended reporting period as running from November 3, 2010 to November 3, 2011. The directors and officers of the bank subsequently were named in a lawsuit filed on December 29, 2011. The insurer denied coverage on the ground that the claim was made after the expiration of the supplemental extended reporting period.

In the coverage litigation that followed, the court initially found that the terms of the policy and the endorsement were inconsistent, which created an ambiguity with respect to whether the purchase of the supplemental extended reporting period displaced the automatic extended reporting period. In making this finding, the court rejected the notion that where there is a conflict between language in the policy form and an endorsement, the language in the endorsement controls. Instead, the court held that the policy, including its endorsements, must be construed as a whole and any "direct conflict" in terms must be resolved in favor of coverage. Accordingly, despite that the endorsement specified that the 12-month supplemental extended reporting period began to run on November 3, 2010, the court ruled that it actually started to run after the

expiration of the 60-day automatic extended reporting period—that is, January 3, 2011—and therefore ended on January 3, 2012. On this basis, the court concluded that the policy responded to the claim against the bank's directors and officers.